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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 REFLEX PACKAGING INC.,

11 Plaintiff,

12 v.

13 AUDIO VIDEO COLOR  
14 CORPORATION, a California  
15 Corporation, d/b/a, AVC  
16 CORPORATION,

17 Defendant.

Case No. CV 13-07615 JAK-MAN

**PROTECTIVE ORDER ENTERED  
PURSUANT TO THE PARTIES'  
STIPULATION**

18 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on  
19 the parties' Stipulation for Entry of Protective Order ("Stipulation") filed on  
20 November 25, 2013, the terms of the protective order to which the parties have  
21 agreed are adopted as a protective order of this Court (which generally shall govern  
22 the pretrial phase of this action) except to the extent, as set forth below, that those  
23 terms have been substantively modified by the Court's amendment of paragraphs 3,  
24 5.2(a) and (b), 9(c), 11, and 12.3 of, and Exhibit A to, the Stipulation.

25 The parties are expressly cautioned that the designation of any information,  
26 document, or thing as CONFIDENTIAL, HIGHLY CONFIDENTIAL –  
27 ATTORNEYS' EYES ONLY, or other designation(s) used by the parties, does not,  
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1 in and of itself, create any entitlement to file such information, document, or thing,  
2 in whole or in part, under seal. Accordingly, reference to this Protective Order or to  
3 the parties' designation of any information, document, or thing as  
4 CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY, or  
5 other designation(s) used by the parties, is wholly insufficient to warrant a filing  
6 under seal.

7 There is a strong presumption that the public has a right of access to judicial  
8 proceedings and records in civil cases. In connection with non-dispositive motions,  
9 good cause must be shown to support a filing under seal. The parties' mere  
10 designation of any information, document, or thing as CONFIDENTIAL, HIGHLY  
11 CONFIDENTIAL – ATTORNEYS' EYES ONLY, or other designation(s) used by  
12 parties, does not -- **without the submission of competent evidence, in the form of**  
13 **a declaration or declarations, establishing that the material sought to be filed**  
14 **under seal qualifies as confidential, privileged, or otherwise protectable --**  
15 constitute good cause.

16 Further, if sealing is requested in connection with a dispositive motion or  
17 trial, then compelling reasons, as opposed to good cause, for the sealing must be  
18 shown, and the relief sought shall be narrowly tailored to serve the specific interest  
19 to be protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th  
20 Cir. 2010). For each item or type of information, document, or thing sought to be  
21 filed or introduced under seal in connection with a dispositive motion or trial, the  
22 party seeking protection must articulate compelling reasons, supported by specific  
23 facts and legal justification, for the requested sealing order. **Again, competent**  
24 **evidence supporting the application to file documents under seal must be**  
25 **provided by declaration.**

26 Any document that is not confidential, privileged, or otherwise protectable in  
27 its entirety will not be filed under seal if the confidential portions can be redacted.  
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1 If documents can be redacted, then a redacted version for public viewing, omitting  
 2 only the confidential, privileged, or otherwise protectable portions of the document,  
 3 shall be filed. **Any application that seeks to file documents under seal in their**  
 4 **entirety should include an explanation of why redaction is not feasible.**

5 Notwithstanding any other provision of this Protective Order, in the event  
 6 that this case proceeds to trial, all information, documents, and things discussed or  
 7 introduced into evidence at trial will become public and available to all members of  
 8 the public, including the press, unless sufficient cause is shown in advance of trial  
 9 to proceed otherwise.

10 **THE PARTIES ARE DIRECTED TO REVIEW CAREFULLY AND**  
 11 **ACT IN COMPLIANCE WITH ALL ORDERS ISSUED BY THE**  
 12 **HONORABLE JOHN A. KRONSTADT, UNITED STATES DISTRICT**  
 13 **JUDGE, INCLUDING THOSE APPLICABLE TO FILINGS UNDER SEAL.**

#### 14 **TERMS OF PROTECTIVE ORDER**

##### 15 1. **PURPOSES AND LIMITATIONS**

16 Disclosure and discovery activity in this action **may** involve  
 17 production of confidential, proprietary, or private information for which special  
 18 protection from public disclosure and from use for any purpose other than  
 19 prosecuting this litigation may be warranted. Accordingly, the **Parties have**  
 20 **stipulated** to and petitioned the Court to enter **this** Protective Order. The **Parties**  
 21 **have acknowledged** that this Protective Order does not confer blanket protections  
 22 on all disclosures or responses to discovery and the protection afforded by the  
 23 Protective Order from public disclosure and use extends only to the limited  
 24 information or items that are entitled to confidential treatment under the applicable  
 25 legal principles. The **Parties have** further acknowledged as set forth in Section 12.3  
 26 below, that this Protective Order does not entitle the **Parties** to file confidential  
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1 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be  
2 followed when a party seeks permission from the Court to file material under seal.

3 2. DEFINITIONS

4 2.1 Challenging Party: a Party or Non-Party that challenges the  
5 designation of information or items under this **Protective** Order.

6 2.2 “CONFIDENTIAL” Information or Items: information  
7 (regardless of how it is generated, stored, or maintained) or tangible things that  
8 qualify for protection under Federal Rule of Civil Procedure 26(c).

9 2.3 Counsel (without qualifier): Outside Counsel of Record and  
10 House Counsel (as well as their support staff).

11 2.4 Designating Party: a Party or Non-Party that designates  
12 information or items that it produces in disclosures or in responses to discovery as  
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
14 ONLY”.

15 2.5 Disclosure or Discovery Material: all items or information,  
16 regardless of the medium or manner in which it is generated, stored, or maintained  
17 (including, among other things, testimony, transcripts, and tangible things), that are  
18 produced or generated in disclosures or responses to discovery in this matter.

19 2.6 Expert: a person with specialized knowledge or experience in a  
20 matter pertinent to the litigation who: (1) has been retained by a Party or its  
21 counsel to serve as an expert witness or as a consultant in this action; (2) is not a  
22 past or current employee of a Party or of a Party’s competitor; and (3) at the time of  
23 retention, is not anticipated to become an employee of a Party or of a Party’s  
24 competitor.

25 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
26 Information or Items: extremely sensitive “Confidential Information or Items,”  
27 disclosure of which to another Party or Non-Party or to House Counsel for a Party  
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1 would create a substantial risk of serious harm that could not be avoided by less  
2 restrictive means. For purposes of this case, “HIGHLY CONFIDENTIAL –  
3 ATTORNEYS’ EYES ONLY” will be limited to: (i) the Parties’ non-public  
4 financial information, as it relates to costs, revenues, and profits generally or from  
5 specific products; (ii) information of a competitively or commercially sensitive or  
6 proprietary nature or trade secrets regarding any thermoformed cushioning  
7 materials made by or for a Party; (iii) non-public customer information, including  
8 non-public arrangements and agreements with customers and the prices at which  
9 products are sold to customer, but not including the names of the customers or  
10 identification of the products sold to them; (iv) research and development materials  
11 concerning unreleased products or services; (v) the confidential terms of any  
12 licenses; and (vi) any other information that the Parties, through their counsel, agree  
13 in writing during the course of this litigation, would create a substantial risk of  
14 serious harm if disclosed. Information regarding the number of units of the product  
15 of specific thermoformed products manufactured, purchased, sold, imported,  
16 exported, or used by or for one of the Parties is *not* “HIGHLY CONFIDENTIAL –  
17 ATTORNEYS’ EYES ONLY” information.

18           2.8 House Counsel: attorneys who are employees of a **Party** to this  
19 action. House Counsel does not include Outside Counsel of Record or any other  
20 outside counsel.

21           2.9 Non-Party: any natural person, partnership, corporation,  
22 association, or other legal entity not named as a **Party** to this action.

23           2.10 Outside Counsel of Record: attorneys who are not employees of  
24 a **Party** to this action but are retained to represent or advise a **Party** to this action  
25 and have appeared in this action on behalf of that **Party** or are affiliated with a law  
26 firm which has appeared on behalf of that **Party**.

1                   2.11 Party: any **Party** to this action, including all of its officers,  
2 directors, employees, consultants, retained experts, and Outside Counsel of Record  
3 (and their support staffs).

4                   2.12 Producing Party: a Party or Non-Party that produces Disclosure  
5 or Discovery Material in this action.

6                   2.13 Professional Vendors: persons or entities that provide litigation  
7 support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or  
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
9 and their employees and subcontractors.

10                  2.14 Protected Material: any Disclosure or Discovery Material that is  
11 designated as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL –  
12 ATTORNEYS’ EYES ONLY.”

13                  2.15 Receiving Party: a Party that receives Disclosure or Discovery  
14 Material from a Producing Party.

### 15           3.     SCOPE

16                   The protections conferred by this **Protective** Order cover not only  
17 Protected Material (as defined above), but also: (1) any information copied or  
18 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
19 compilations of Protected Material; and (3) any **deposition** testimony,  
20 conversations, or presentations by Parties or their Counsel that might reveal  
21 Protected Material. However, the protections conferred by this **Protective** Order do  
22 not cover the following information: (a) any information that is in the public  
23 domain at the time of disclosure to a Receiving Party or becomes part of the public  
24 domain after its disclosure to a Receiving Party as a result of publication not  
25 involving a violation of this **Protective** Order, including becoming part of the  
26 public record through trial or otherwise; and (b) any information known to the  
27 Receiving Party prior to the disclosure or obtained by the Receiving Party after the  
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1 disclosure from a source who obtained the information lawfully and under no  
2 obligation of confidentiality to the Designating Party. Any use of Protected  
3 Material at trial shall be governed by a separate agreement or order.

4 4. DURATION

5 Even after final disposition of this litigation, the confidentiality  
6 obligations imposed by this **Protective** Order shall remain in effect until a  
7 Designating Party agrees otherwise in writing or a court order otherwise directs.  
8 Final disposition shall be deemed to be the later of: (1) dismissal of all claims and  
9 defenses in this action, with or without prejudice; and (2) final judgment herein  
10 after the completion and exhaustion of all appeals, rehearings, remands, trials, or  
11 reviews of this action, including the time limits for filing any motions or  
12 applications for extension of time pursuant to applicable law.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for  
15 Protection. Each Party or Non-Party that designates information or items for  
16 protection under this **Protective** Order must take care to limit any such designation  
17 to specific material that qualifies under the appropriate standards. To the extent it is  
18 practical to do so, the Designating Party must designate for protection only those  
19 parts of material, documents, items, or oral or written communications that qualify  
20 — so that other portions of the material, documents, items, or communications for  
21 which protection is not warranted are not swept unjustifiably within the ambit of  
22 this **Protective** Order.

23 Mass, indiscriminate, or routinized designations are prohibited.  
24 Designations that are shown to be clearly unjustified or that have been made for an  
25 improper purpose (*e.g.*, to unnecessarily encumber or retard the case development  
26 process or to impose unnecessary expenses and burdens on other parties) expose the  
27 Designating Party to sanctions.  
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1 If it comes to a Designating Party's attention that information or items  
 2 that it designated for protection do not qualify for protection at all or do not qualify  
 3 for the level of protection initially asserted, that Designating Party must promptly  
 4 notify all other parties that it is withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise  
 6 provided in this **Protective** Order (*see, e.g.*, second paragraph of Section 5.2(a)  
 7 below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that  
 8 qualifies for protection under this **Protective** Order must be clearly so designated  
 9 before the material is disclosed or produced.

10 Designation in conformity with this **Protective** Order requires:

11 (a) for information in documentary form (*e.g.*, paper or  
 12 electronic documents, but excluding transcripts of depositions), that the Producing  
 13 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL —  
 14 ATTORNEYS' EYES ONLY" to each page that contains protected material. If  
 15 only a portion or portions of the material on a page qualifies for protection, the  
 16 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making  
 17 appropriate markings in the margins) and must specify, for each portion, the level  
 18 of protection being asserted.

19 A Party or Non-Party that makes original documents or materials  
 20 available for inspection need not designate them for protection until after the  
 21 inspecting Party has indicated which material it would like copied and produced.  
 22 During the inspection and before the designation, all of the material made available  
 23 for inspection shall be deemed "HIGHLY CONFIDENTIAL — ATTORNEYS'  
 24 EYES ONLY." After the inspecting Party has identified the documents it wants  
 25 copied and produced, the Producing Party must determine which documents, or  
 26 portions thereof, qualify for protection under this **Protective** Order. Then, before  
 27 producing the specified documents, the Producing Party must affix the appropriate  
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1 legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
2 EYES ONLY” to each page that contains Protected Material. If only a portion or  
3 portions of the material on a page qualifies for protection, the Producing Party also  
4 must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings  
5 in the margins) and must specify, for each portion, the level of protection being  
6 asserted.

7 (b) for testimony given in deposition, that the Designating  
8 Party identify on the record, before the close of the deposition, all protected  
9 testimony and specify the level of protection being asserted. When it is impractical  
10 to identify separately each portion of **deposition** testimony that is entitled to  
11 protection and it appears that substantial portions of the testimony may qualify for  
12 protection, the Designating Party may invoke on the record (before the deposition is  
13 concluded) a right to have up to 21 days to identify the specific portions of the  
14 **deposition** testimony as to which protection is sought and to specify the level of  
15 protection being asserted. Only those portions of the **deposition** testimony that are  
16 appropriately designated for protection within the 21 days shall be covered by the  
17 provisions of this Protective Order. Alternatively, a Designating Party may specify,  
18 at the deposition or up to 21 days afterwards, if that period is properly invoked, that  
19 the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY  
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.

21 **Prior to a deposition at which it is reasonably expected that**  
22 **Protected Material shall be addressed, Parties shall give the other parties notice so**  
23 **that the other parties can ensure that only authorized individuals who have signed**  
24 **the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at the**  
25 **deposition.** The use of a document as an exhibit at a deposition shall not in any  
26 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
27 – ATTORNEYS’ EYES ONLY.”  
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1                   **Deposition** transcripts containing Protected Material shall have an  
2 obvious legend on the title page that the transcript contains Protected Material, and  
3 the title page shall be followed by a list of all pages (including line numbers as  
4 appropriate) that have been designated as Protected Material and the level of  
5 protection being asserted by the Designating Party. The Designating Party shall  
6 inform the court reporter of these requirements. Any **deposition** transcript that is  
7 prepared before the expiration of a 21-day period for designation shall be treated  
8 during that period as if it had been designated “HIGHLY CONFIDENTIAL —  
9 ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the  
10 expiration of that period, the **deposition** transcript shall be treated only as actually  
11 designated.

12                   (c) for information produced in some form other than  
13 documentary and for any other tangible items, that the Producing Party affix in a  
14 prominent place on the exterior of the container or containers in which the  
15 information or item is stored the legend “CONFIDENTIAL” or “HIGHLY  
16 CONFIDENTIAL — ATTORNEYS’ EYES ONLY.” If only a portion or portions  
17 of the information or item warrant protection, the Producing Party, to the extent  
18 practicable, shall identify the protected portion(s) and specify the level of protection  
19 being asserted.

20                   5.3 Inadvertent Failures to Designate. If timely corrected, an  
21 inadvertent failure to designate qualified information or items does not, standing  
22 alone, waive the Designating Party’s right to secure protection under this  
23 **Protective** Order for such material. Upon timely correction of a designation, the  
24 Receiving Party must make reasonable efforts to assure that the material is treated  
25 in accordance with the provisions of this **Protective** Order.  
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1           6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

2           6.1     Timing of Challenges. Any Party or Non-Party may challenge  
3 a designation of confidentiality at any time. Unless a prompt challenge to a  
4 Designating Party's confidentiality designation is necessary to avoid foreseeable,  
5 substantial unfairness, unnecessary economic burdens, or a significant disruption or  
6 delay of the litigation, a Party does not waive its right to challenge a confidentiality  
7 designation by electing not to mount a challenge promptly after the original  
8 designation is disclosed.

9           6.2     Meet and Confer. The Challenging Party shall initiate the  
10 dispute resolution process by providing written notice of each designation it is  
11 challenging and describing the basis for each challenge. To avoid ambiguity as to  
12 whether a challenge has been made, the written notice must recite that the challenge  
13 to confidentiality is being made in accordance with this specific paragraph of the  
14 Protective Order. The Parties shall attempt to resolve each challenge in good faith  
15 and must begin the process by conferring directly (in voice to voice dialogue; other  
16 forms of communication are not sufficient) within 14 days of the date of service of  
17 notice. In conferring, the Challenging Party must explain the basis for its belief that  
18 the confidentiality designation was not proper and must give the Designating Party  
19 an opportunity to review the designated material, to reconsider the circumstances,  
20 and, if no change in designation is offered, to explain the basis for the chosen  
21 designation. A Challenging Party may proceed to the next stage of the challenge  
22 process only if it has engaged in this meet and confer process first or establishes  
23 that the Designating Party is unwilling to participate in the meet and confer process  
24 in a timely manner.

25           6.3     Judicial Intervention. If the Parties cannot resolve a challenge  
26 without Court intervention, the Designating Party shall file and serve a motion to  
27 retain confidentiality under Civil Local Rule 7 (and in compliance with Civil Local  
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Rule 79-5, if applicable) within 21 days of the initial notice of challenge or within 14 days of the Parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and

1 under the conditions described in this **Protective** Order. When the litigation has  
2 been terminated, a Receiving Party must comply with the provisions of Section 13  
3 below (FINAL DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party  
5 at a location and in a secure manner that ensures that access is limited to the  
6 persons authorized under this Protective Order.

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
8 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
9 Receiving Party may disclose any information or item designated  
10 “CONFIDENTIAL” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this  
12 action, as well as employees of said Outside Counsel of Record to whom it is  
13 reasonably necessary to disclose the information for this litigation and who have  
14 signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto  
15 as Exhibit A;

16 (b) the officers, directors, and employees (including House  
17 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this  
18 litigation and who have signed the “Acknowledgment and Agreement to Be  
19 Bound” (Exhibit A);

20 (c) Experts (as defined in this **Protective** Order) of the  
21 Receiving Party to whom disclosure is reasonably necessary for this litigation and  
22 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (d) the Court and its personnel;

24 (e) court reporters and their staff, professional jury, or trial  
25 consultants, and Professional Vendors to whom disclosure is reasonably necessary  
26 for this litigation and who have signed the “Acknowledgment and Agreement to Be  
27 Bound” (Exhibit A);  
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1 (f) during their depositions, witnesses in the action to whom  
2 disclosure is reasonably necessary and who have signed the “Acknowledgment and  
3 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating  
4 Party or ordered by the Court. Pages of transcribed deposition testimony or  
5 exhibits to depositions that reveal Protected Material must be separately bound by  
6 the court reporter and may not be disclosed to anyone except as permitted under  
7 this Protective Order.

8 (g) the author or recipient of a document containing the  
9 information or a custodian or other person who otherwise possessed or knew the  
10 information.

11 7.3 Disclosure of “HIGHLY CONFIDENTIAL — ATTORNEYS’  
12 EYES ONLY” Information or Items. Unless otherwise ordered by the Court or  
13 permitted in writing by the Designating Party, a Receiving Party may disclose any  
14 information or item designated “HIGHLY CONFIDENTIAL — ATTORNEYS’  
15 EYES ONLY” only to:

16 (a) the Receiving Party’s Outside Counsel of Record in this  
17 action as well as employees of said Outside Counsel of Record to whom it is  
18 reasonably necessary to disclose the information for this litigation and who have  
19 signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto  
20 as Exhibit A;

21 (b) Experts of the Receiving Party (1) to whom disclosure is  
22 reasonably necessary for this litigation, (2) who have signed the “Acknowledgment  
23 and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set  
24 forth in paragraph 7.4(a)(2), below, have been followed;

25 (c) the Court and its personnel;

26 (d) court reporters and their staff, professional jury, or trial  
27 consultants, and Professional Vendors to whom disclosure is reasonably necessary  
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1 for this litigation and who have signed the “Acknowledgment and Agreement to Be  
2 Bound” (Exhibit A); and

3 (e) the author or recipient of a document containing the  
4 information or a custodian or other person who otherwise possessed or knew the  
5 information.

6 7.4 Procedures for Approving or Objecting to Disclosure of  
7 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” Information or  
8 Items to Experts.

9 (a) Unless otherwise ordered by the Court or agreed to in  
10 writing by the Designating Party, a Party **who or which** seeks to disclose to an  
11 Expert (as defined in this **Protective** Order) any information or item that has been  
12 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant  
13 to paragraph 7.3(c) first must make a written request to the Designating Party that:  
14 (1) identifies the general categories of “HIGHLY CONFIDENTIAL —  
15 ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks  
16 permission to disclose to the Expert; (2) sets forth the full name of the Expert and  
17 the city and state of his or her primary residence; (3) attaches a copy of the Expert's  
18 current resume; (4) identifies the Expert's current employer(s); (5) identifies each  
19 person or entity from whom the Expert has received compensation or funding for  
20 work in his or her areas of expertise or to whom the expert has provided  
21 professional services, including in connection with a litigation, at any time during  
22 the preceding five years; and (6) identifies (by name and number of the case, filing  
23 date, and location of court) any litigation in connection with which the Expert has  
24 offered expert testimony, including through a declaration, report, or testimony at a  
25 deposition or trial, during the preceding five years.

26 (b) A Party that makes a request and provides the information  
27 specified in the preceding respective paragraphs may disclose the subject Protected  
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1 Material to the identified Expert unless, within 14 days of delivering the request,  
 2 the Party receives a written objection from the Designating Party. Any such  
 3 objection must set forth in detail the grounds on which it is based.

4 (c) A Party **who or which** receives a timely written objection  
 5 must meet and confer with the Designating Party (through direct voice to voice  
 6 dialogue) to try to resolve the matter by agreement within seven days of the written  
 7 objection. If no agreement is reached, the Party seeking to make the disclosure to  
 8 the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance  
 9 with Civil Local Rule 79-5, if applicable) seeking permission from the Court to do  
 10 so. Any such motion must describe the circumstances with specificity, set forth in  
 11 detail the reasons why the disclosure to the Expert is reasonably necessary, assess  
 12 the risk of harm that the disclosure would entail, and suggest any additional means  
 13 that could be used to reduce that risk. In addition, any such motion must be  
 14 accompanied by a competent declaration describing the **Parties'** efforts to resolve  
 15 the matter by agreement (*i.e.*, the extent and the content of the meet and confer  
 16 discussions) and setting forth the reasons advanced by the Designating Party for its  
 17 refusal to approve the disclosure.

18 In any such proceeding, the Party opposing disclosure to  
 19 the Expert shall bear the burden of proving that the risk of harm that the disclosure  
 20 would entail (under the safeguards proposed) outweighs the Receiving Party's need  
 21 to disclose the Protected Material to its Expert.

22 7.5 Procedures for Disclosure of "HIGHLY  
 23 CONFIDENTIAL — ATTORNEYS' EYES ONLY" Information or Items to  
 24 House Counsel. "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
 25 information may be disclosed to a specifically designated House Counsel of a Party  
 26 *only if* such disclosure is first agreed to in writing by the Designating Party or upon  
 27 further order of the Court. Nothing in this **Protective** Order will preclude such  
 28



1 agreement or further order. Any House Counsel allowed to see such information  
 2 after an agreement or order must sign the “Acknowledgment and Agreement to Be  
 3 Bound” (Exhibit A) and will be bound by this **Protective** Order.

4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
 5 PRODUCED IN OTHER LITIGATION

6 If a Party is served with a subpoena or a court order issued in other  
 7 litigation that compels disclosure of any information or items designated in this  
 8 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
 9 EYES ONLY” that Party must:

10 (a) promptly notify in writing the Designating Party. Such  
 11 notification shall include a copy of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the  
 13 subpoena or order to issue in the other litigation that some or all of the material  
 14 covered by the subpoena or order is subject to this Protective Order. Such  
 15 notification shall include a copy of this Protective Order; and

16 (c) cooperate with respect to all reasonable procedures sought  
 17 to be pursued by the Designating Party whose Protected Material may be affected.

18 If the Designating Party timely seeks a protective order, the Party  
 19 served with the subpoena or court order shall not produce any information  
 20 designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
 21 ATTORNEYS’ EYES ONLY” before a determination by the Court from which the  
 22 subpoena or order issued, unless the Party has obtained the Designating Party’s  
 23 permission. The Designating Party shall bear the burden and expense of seeking  
 24 protection in that court of its confidential material, and nothing in these provisions  
 25 should be construed as authorizing or encouraging a Receiving Party in this action  
 26 to disobey a lawful directive from another court.  
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1           9.     A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
 2     PRODUCED IN THIS LITIGATION

3                   (a)     The terms of this **Protective** Order are applicable to  
 4     information produced by a Non-Party in this action and designated as  
 5     “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 6     ONLY.” Such information produced by Non-Parties in connection with this  
 7     litigation is protected by the remedies and relief provided by this **Protective** Order.  
 8     Nothing in these provisions should be construed as prohibiting a Non-Party from  
 9     seeking additional protections.

10                  (b)     In the event that a Party is required, by a valid discovery  
 11     request, to produce a Non-Party’s confidential information in its possession and the  
 12     Party is subject to an agreement with the Non-Party not to produce the Non-Party’s  
 13     confidential information, then the Party shall:

14                         1.     promptly notify in writing the Requesting Party and  
 15     the Non-Party that some or all of the information requested is subject to a  
 16     confidentiality agreement with a Non-Party;

17                         2.     promptly provide the Non-Party with a copy of the  
 18     Protective Order in this litigation, the relevant discovery request(s), and a  
 19     reasonably specific description of the information requested; and

20                         3.     make the information requested available for  
 21     inspection by the Non-Party.

22                  (c)     If the Non-Party fails to object or seek a protective order  
 23     from this Court within 14 days of receiving the notice and accompanying  
 24     information, the Receiving Party may produce the Non-Party’s confidential  
 25     information responsive to the discovery request. If the Non-Party timely seeks a  
 26     protective order, the Receiving Party shall not produce any information in its  
 27     possession or control that is subject to the confidentiality agreement with the Non-  
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1 Party before a determination by the Court. Absent a court order to the contrary, the  
2 Non-Party shall bear the burden and expense of seeking protection in this Court of  
3 its Protected Material. **Nothing in this Protective Order should be construed as**  
4 **authorizing a Party or a Non-Party to disobey a lawful directive from another**  
5 **court.**

6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has  
8 disclosed Protected Material to any person or in any circumstance not authorized  
9 under this Protective Order, the Receiving Party must immediately: (a) notify in  
10 writing the Designating Party of the unauthorized disclosure(s); (b) use its best  
11 efforts to retrieve all unauthorized copies of the Protected Material; (c) inform the  
12 person or persons to whom unauthorized disclosures were made of all the terms of  
13 this **Protective** Order; and (d) request such person or persons to execute the  
14 “Acknowledgment and Agreement to Be Bound” that is attached hereto as  
15 Exhibit A.

16 11. INADVERTENT PRODUCTION OF PRIVILEGED OR  
17 OTHERWISE PROTECTED MATERIAL

18 When a Producing Party gives notice to Receiving Parties that certain  
19 inadvertently produced material is subject to a claim of privilege or other  
20 protection, the obligations of the Receiving Parties are those set forth in Federal  
21 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
22 whatever procedure may be established in an e-discovery order that provides for  
23 production without prior privilege review. Pursuant to Federal Rule of Evidence  
24 502(d) and (e), insofar as the **Parties** reach an agreement on the effect of disclosure  
25 of a communication or information covered by the attorney-client privilege or work  
26 product protection, the **Parties** may incorporate their agreement in a **further**  
27 stipulated protective order submitted to the Court.  
28

1           12.    MISCELLANEOUS

2           12.1   Right to Further Relief. Nothing in this Protective Order  
3 abridges the right of any person to seek its modification by the Court in the future.

4           12.2   Right to Assert Other Objections. By **having** stipulated to the  
5 entry of this Protective Order, no Party waives any right it otherwise would have to  
6 object to disclosing or producing any information or item on any ground not  
7 addressed in this Protective Order. Similarly, no Party waives any right to object  
8 on any ground to use in evidence of any of the material covered by this Protective  
9 Order.

10          12.3   Filing Protected Material. Without written permission from the  
11 Designating Party or a Court order secured after appropriate notice to all interested  
12 persons, a Party may not file in the public record in this action any Protected  
13 Material. A Party that seeks to file under seal any Protected Material must comply  
14 with Civil Local Rule 79-5 **and the provisions of this Protective Order.**  
15 Protected Material may only be filed under seal pursuant to a court order  
16 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil  
17 Local Rule 79-5, a sealing order will issue only upon a request establishing that the  
18 Protected Material at issue is privileged, protectable as a trade secret, or otherwise  
19 entitled to protection under the law. If a Receiving Party's request to file Protected  
20 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the Court,  
21 then the Receiving Party may file the Protected Material in the public record  
22 pursuant to Civil Local Rule 79-5(e), unless otherwise instructed by the Court.

23          13.    FINAL DISPOSITION

24          Within 60 days after the final disposition of this action, as defined in  
25 paragraph 4, each Receiving Party must return all Protected Material to the  
26 Producing Party or destroy such material. As used in this subdivision, "all  
27 Protected Material" includes all copies, abstracts, compilations, summaries, and any  
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1 other format reproducing or capturing any of the Protected Material. Whether the  
2 Protected Material is returned or destroyed, the Receiving Party must submit a  
3 written certification to the Producing Party (and, if not the same person or entity, to  
4 the Designating Party) by the 60 day deadline that: (1) identifies (by category,  
5 where appropriate) all the Protected Material that was returned or destroyed; and  
6 (2) affirms that the Receiving Party has not retained any copies, abstracts,  
7 compilations, summaries, or any other format reproducing or capturing any of the  
8 Protected Material. Notwithstanding this provision, Counsel are entitled to retain  
9 an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
10 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
11 reports, attorney work product, and consultant and expert work product, even if  
12 such materials contain Protected Material. Any such archival copies that contain or  
13 constitute Protected Material remain subject to this Protective Order as set forth in  
14 Section 4 (DURATION).

15  
16 **IT IS SO ORDERED.**

17  
18 Dated: December 12, 2013

*Margaret A. Nagle*

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20 MARGARET A. NAGLE  
21 UNITED STATES MAGISTRATE JUDGE  
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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Protective Order that was  
issued by the United States District Court for the Central District of California on  
December 12, 2013, in the case of *Reflex Packaging, Inc., v. Audio Video Color  
Corporation*, Case No. CV 13-07615-JAK(MANx). I agree to comply with and to  
be bound by all the terms of this Protective Order, and I understand and  
acknowledge that failure to so comply could expose me to sanctions and  
punishment in the nature of contempt. I solemnly promise that I will not disclose in  
any manner any information or item that is subject to this Protective Order to any  
person or entity, except in strict compliance with the provisions of this Protective  
Order.

I further agree to submit to the jurisdiction of the United States District  
Court for the Central District of California for the purpose of enforcing the terms of  
this Protective Order, even if such enforcement proceedings occur after termination  
of this action.

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1 I hereby appoint \_\_\_\_\_ [print or type full name] of  
2 \_\_\_\_\_ [print or type full address and telephone number] as my  
3 California agent for service of process in connection with this action or any  
4 proceedings related to enforcement of this Protective Order.

5 Date: \_\_\_\_\_

6 City and State where sworn and signed:

7 \_\_\_\_\_

8 Printed name: \_\_\_\_\_

9 [printed name]

10 Signature: \_\_\_\_\_

11 [signature]

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